

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

November 2007

# **Voter Intelligence**

FYI for that one in a million person who missed the news—voters rejected the universal voucher program created in the 2007 legislative session.

Statements that voters were uninformed or Utahns don't care about kids did little to endear voucher supporters to the 62 percent majority of voters who disapproved of the program. Pro-voucher responses that voters didn't understand a bill that was thoroughly analyzed are similarly insulting to voters.

The message from the vote is not that Utahns are dumb or didn't understand the bill; it is that the bill overreached and legislators failed to listen to their const

listen to their constituents.

As seen in other states, voucher programs can be crafted to satisfy the public. Such programs include vouchers for public school parents as well as private and limit the recipients to those with demonstrated need. The successful programs also place requirements on private schools that mirror those in public schools.

All three of these important components were either missing or minimally represented in Utah's bill.

There were also the unanswered questions about the bill's constitutionality.

All of which led to a Herculean citizens' effort to put the program on the ballot for a vote of the people.

From the beginning, polls suggested the people would never succeed in getting the referendum on the ballot. But Utah citizens were determined to have a vote and the referendum made it to the ballot.

Then came the challenges to the State Board, insisting that it implement some version of the pro-

gram despite the referendum.

Those efforts failed after the Utah Supreme Court ruled that the bill amending the program could not stand as a separate bill.

And, after months of wrangling between proand anti-voucher camps, the vote finally puts to rest the controversy over H.B. 148. New programs will undoubtedly be introduced in future legislative sessions, but those bills might at least attempt to incorporate the provisions that have made other voucher programs acceptable to voters.

In the meantime, public education continues to face the challenge of a large school age population, low teacher supply and even lower funding. The public education community has as much to learn from the Jordan District split vote as voucher proponents do from the voucher vote. Neither Legislators or public education supporters should look for excuses to explain away these votes. Both groups need to look for solutions.

What is still missing, however, is a sense that Legislators and public education supporters can work together for those solutions. If the more contentious ideas, such as vouchers or greater rights for one group of parents over another, can be set aside, perhaps the groups can come together and craft mutually acceptable proposals for improving public education offerings for all students.

Barring a meeting of the minds, we at least hope for a far more civilized conversation than we have heard over the past several months.

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#### **UPPAC CASES**

• The Utah State Board of Education accepted a Stipulated Agreement suspending Don. W. Carver's educator license for one year. The suspension results from Carver engaging multiple classes of physics students in discussions of abortion, contraception, and AIDS without prior written parental consent.

#### Eye On Legislation

Bill requests for the 2008 legislative session are starting to pour into the Legislative Counsel offices.

While none have text yet, it is clear some old faves will return.

Sen. Mark Madsen, R-Lehi, will continue his quest for Home School and Extracurricular Activities Amendments and High School Graduation Requirements. In past years, these bills have focused on giving home school students access to high school diplomas and greater participation rights in high school athletics and activities. Madsen is seeking a separate bill regarding charter and online school student participation in neighborhood school extracurricular activities.

Another perennial favorite, State Board elections, will probably generate several bill requests. One request has already been filed by Sen. Howard Stephenson, R-Draper. The Constitutional Review

Commission is also looking at the issue, though members seem to be proceeding with caution.

Sen. Stephenson may continue to seek a constitutional amendment placing the State Superintendent back under the direction of the governor.

As expected, Sen. Stephenson is also spon-

soring a bill to create a task force on math education. The task force, per the bill title, will also address science and technology education.

A few Legislators are considering bills to improve salaries for math, science, and special education teachers by extending their contract days. Rep. Ron Bigelow, R-West Valley, and Rep. Ronda Menlove, R-Garland, are among the legislators requesting such bills.

School fees will also be addressed again. Rep. Craig Frank, R-Pleasant Grove, has filed a request for School Fee Amendments. During the 2007 session, Rep. Frank attempted to explore the idea of eliminating school fees. This interesting discussion was not fully explored, however, due to a lack of time.

Some interesting newcomers to the arena this session include Use of Electronic Devices in Public Schools requested by Rep. Sheryl Allen, R-Bountiful, School Counselors-enhanced Ratios requested by Sen. Mike Dmitrich, D-Price, and Utah School Seismic Hazard Inventory requested by Rep. Larry Wiley, D-West Valley.

#### **UPPAC** Case of the Month

Some words of wisdom from the Professional Practices trenches:

- 1. Pornography is not permitted at any public school, regardless of the teacher's reason for having it there (FYI: no medical doctor we could find would ever prescribe that a patient regularly view pornography as part of a male infertility treatment—but thanks for an original excuse!).
- 2. If a student, former student, friend, co-worker or loved one sends you an inappropriate email at work, do not save it on your computer, forward it to others, or allow the person to send more. Instead, a professional educator should send a professional email back explaining why the professional educator cannot accept such emails at his/her place of business. The educator should also immediately, thoroughly, and

permanently delete all such emails.

- 3. Though we all agree teachers are underpaid, that is not an excuse for stealing extra cash from the school or district, whether through false reimbursement claims, elaborate embezzlement schemes, claims for items purchased for personal use, or overly optimistic logs of hours worked.
- 4. No matter how low cut the student's shirt, no matter how far down the boy's pants are sagging, no matter how much skin is showing in general, a teacher may NOT make a sexually suggestive comment to a student.
- 5. No matter how "cool" the teacher, teachers may not provide alcohol or drugs to students, nor be mere observers to such activities. If a teacher sees a student engaged in underage drinking or

- drug use, the teacher MUST tell the parents and the school administration.
- 6. If a student tells you she thinks she needs a pregnancy test, do NOT buy her one! You must talk to the parents and have their written permission to discuss the matter with the student.
- 7. Test administration instructions may be dull, but the teacher MUST follow the instructions to the letter and only make those accommodations approved by the testing coordinator prior to that particular test administration (do not assume the accommodations remain the same through each administration).
- 8. The vast majority of Utah teachers act professionally and ethically—**THANK YOU!**

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#### **Recent Education Cases**

<u>Madrid v. Anthony</u> (Tx. D. Ct. 2007). In a classic example of the boundaries between student rights

and school discipline, the Federal District Court in Texas upheld a school's ban on t-shirts with messages regarding immigration issues.

As always with First
Amendment cases, the facts are key. Roughly 300 students had staged a walkout to protest federal immigration legislation. The principal invited the students to the school auditorium to discuss their views, then warned the kids that another walk-out would lead to suspensions.

The principal then learned that Hispanic students planned to wear t-shirts proclaiming "We Are Not Criminals." Caucasian and African-American students, on the other hand, planned to wear shirts reading "Border Patrol." While the principal did not find the messages on the shirts objectionable, he was afraid that existing racial tension in the school would boil over into confrontations between students.

The next day, 130 of the protesting students walked out again. The students were suspended for three days. Parents showed up on

the first day of the suspensions and demanded a meeting with the principal. The principal told the

parents they would need to schedule appointments.

The parents then sued on behalf of themselves and their students. The parents alleged that the students' free speech rights were violated by

the t-shirt ban and the parents' rights of assembly were violated by the principal's request that the parents schedule appointments.

The court disagreed, finding that the principal had a legitimate fear of imminent disruption if he allowed the students to wear the t-shirts based on a history of racial tension at the school. Students on both sides of the issue admitted that the t-shirts would have provoked fights.

The court also found that the parents had no right to assemble on school grounds. Further, the parents refused to comply with the school's disciplinary process and made it difficult for other parents to pick up their kids. The school could "deny parents access to school property to maintain the education process," including the discipline process.

DePinto v. Bayonne Bd. of Ed. (N.J. D. Ct. 2007). On the other hand, a school DID violate students' First Amendment rights when it disciplined students for wearing buttons depicting the Hitler Youth in protest against the school's uniform policy.

In this case, the court found that the school had no reason to fear disruption and the students' speech warranted First Amendment protection. The school could prohibit the students from passing out the buttons on school grounds, but it could not prohibit the kids from wearing the buttons.

Michael Brandt v. Board of Ed. (S.Ct. 2007). Finally, on the t-shirt speech front, the U.S. Supreme Court denied certiorari to the student in a case from the 7th Circuit. The circuit court ruled that the Board had NOT violated the student's First Amendment rights by excluding a student's t-shirt design from a competition for a class shirt and rigging the outcome, or so students suspected. The court found the school's practice questionable, but still constitutional.

## **Your Questions**

Q: My child's public school requires a uniform. The uniform can be purchased at one of four vendors. In recognition that this is a fee, the school offers a fee waiver, but only for one uniform. Is this reasonable?

A: Probably not. The general rule for fee waivers is that the school must provide a reasonable amount—the amount that a student would be expected to have. Few, if any, students would typically own one uniform.

What do you do when. . . ?

While not a definitive count, it would seem reasonable for a student to manage with two pairs of pants, and three shirts. On the other hand, it would be unreasonable to expect a fee waiver for seven complete uniforms.

Where the number is up to the school, it must be reasonable under the circumstances and applied consistently for all students.

Q: My ex-spouse and I have joint custody but live in two different school districts. Our child spends three weeks at a time with each parent. Is it possible for our child to attend school in each district depending on which parent the student is living with at the time?

A: No. A district would have to drop the student from the rolls after the first 10 consecutive days of

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Utah State Office of Education

#### Utah State Office of Education

250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jean.hill@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

### Your Questions Cont.

(Continued from page 3) absence.

More importantly, the student would probably end up failing classes in both districts because each school would have its own

pace and materials and would be unlikely to be perfectly matched in their curriculums through each threeweek transition— English class A may

be discussing *Hamlet* while class B is preparing for a test on *I Know Why the Caged Bird Sings*. Dual enrollment enables students to take full courses at another school, it does not permit dropping in to various courses from time to time.

Q: May we provide the education records of a past and now-

deceased student to family members?

A: Yes. If the student would still be under the age of 18, the right to review the records still belongs

to the family anyway. If the student would be over the age of 18, his or her death leaves no one with any rights under FERPA and the school may disclose the records, or not, as it sees fit.

Q: If a student does not complete a community service graduation requirement, can the school deny the student his or her diploma?

A: If the community service has been clearly defined as a requirement for graduation, and the student does not complete the requirement, the student has not earned his or her diploma. State Board rule R277-705 reiterates in several places that a diploma represents the student's completion of all state AND district requirements. Until the student has accomplished both, he is not entitled to a diploma.

On the flip side, a student who has completed the requirements may not be denied the diploma for other reasons, such as unpaid fees.

Q: I have withdrawn my student from school. The school is now seeking the full amount of unpaid fees. Doesn't it have to prorate the fees since we are not finishing the school year?

A: No, if it is clear from the beginning that the fees are nonrefundable.